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Complaint #0902-23-04

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

I certify that this is a full, true and correct copy of the original document on file with The Neighborhood Commission Office, City and County of Honolulu.

Signature

AUG 10 2010

Date _____

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

Complainant alleged in his May 18, 2009 complaint that Respondent violated Section 2-14-117 of the 2008 Neighborhood Plan ("the Plan") by replacing Scott Belford as the Board's Oahu Metropolitan Planning Committee, Citizen Advisory Committee ("OMPO CAC") representative and stating that he was replaced because of poor attendance.

The Commission heard the testimony presented by the parties and witnesses and reviewed the exhibit and other papers submitted, discussed the matter, and with the advice of counsel, finds as follows:

FINDINGS OF FACT

1. The Complaint was filed on May 18, 2009, pursuant to the provisions of Section 2-18-201 (a)(3) of the Plan.
2. At all times relevant herein, Complainant was a member of Ewa Neighborhood Board No. 23.
3. At all times relevant herein, Respondent was the Board Chair.
4. Section 2-18-201(d) of the Plan requires a respondent to file a written response to a recommendation within forty-five (45) calendar days after the date a copy of the complaint was sent to the respondent. The deadline may be extended by the Commission or its designee if the respondent submits valid reasons in writing prior to the response deadline.
5. Notice of the Complaint was sent to Respondent on November 25, 2009. The response deadline in this matter was January 11, 2010. Respondent did not request an extension of said deadline, in writing or otherwise, prior to the response deadline and no response was received from Respondent.
6. Section 2-18-201(e) of the Plan provides that if Respondent fails to timely file a response, any allegation contained in the recommendation is deemed admitted by Respondent.
7. Respondent failed to file a timely response to the Complaint.
8. Section 2-14-117 of the Plan requires all board members to promote and preserve the order and decorum of the board proceedings.

9. On July 9, 2010, in accordance with Hawaii Revised Statutes ("HRS") Sections 91-9 and 91-9.5, notice of the hearing was provided to the parties via certified mail, return receipt requested.

10. Although Respondent claimed that he did not receive the hearing notice, he received notification from the postal service of the certified letter and failed to retrieve it from the post office.

11. Respondent did not intend to avoid service of the certified letter.

12. Respondent was informed of the hearing several days prior to the hearing date but did not request an extension of the hearing date prior to appearing at the hearing.

13. On February 10, 2009, OMPO CAC sent a letter to the Ewa Neighborhood Board informing the Board that it needed to have a representative attend at least six (6) of the eleven (11) meetings scheduled for fiscal year 2009 which ended in June 2009.

14. According to the letter, as of February 2009, the Board representative had attended three (3) meetings.

15. The letter also provided information regarding the next meeting of OMPO CAC and the process for designating an alternate representative.

16. The letter was addressed to Richard Hargrave, the outgoing chair of the Ewa Board, and Scott Belford the OMPO CAC representative under Hargrave.

17. Hargrave gave the letter to Respondent, who was the incoming Board chair. Hargrave advised Respondent that he needed to take care of the OMPO CAC letter.

18. Respondent believed that the letter meant that the Board's seat on the OMPO CAC was in jeopardy and that he needed to name a new representative.

19. At the May 14, 2009 meeting, Respondent announced that Board member Coby Lynn would be the OMPO CAC representative from the Ewa Neighborhood Board.

20. Section 2-14-123 (b)(13) of the Plan gives the Board chair the authority to appoint and remove all board delegates unless otherwise directed by the Board.

CONCLUSIONS OF LAW

1. The Complaint was filed in accordance with the provisions of Section 2-18-201 of the Plan.

2. The parties were properly noticed pursuant to HRS Sections 91-9 and 91-9.5.

3. This hearing was properly conducted in accordance with HRS Chapter 91 and Section 2-18-203 of the Plan.

4. This matter is properly before the Commission pursuant to Section 2-18-203 of the Plan and the Commission has the authority to review a board and/or board member's action(s) and issue sanctions in accordance with Sections 2-18-203 and 2-18-204 of the Plan.

5. Pursuant to HRS Section 91-10(5), the Complainant has the burden of proof including the burden of producing evidence as well as the burden of persuasion by a preponderance of the evidence.

6. No response to the complaint was filed by Respondent. Therefore, in accordance with Section 2-18-201(e), the factual allegations of the complaint are deemed admitted by Respondent.

7. However, the only documentary evidence provided to the Commission, which was admitted without objection by either party, is the February 10, 2009 letter from OMPO CAC. The letter supports Respondent's understanding of the situation with the OMPO CAC representative.

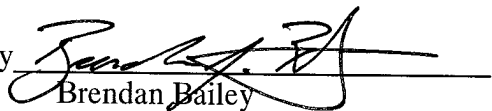
8. Complainant did not dispute the authority of the Chair to appoint board delegates.
9. With respect to Section 2-14-117 of the Plan, the Commission finds that the Complainant has not provided sufficient evidence to demonstrate that the Respondent failed to promote and preserve the order and decorum of the Board's proceedings by replacing Scott Belford as OMPO CAC representative with Board member Coby Lynn. Thus, the Commission finds that Respondent did not violate Section 2-14-117 of the Plan.

DECISION AND ORDER

Based upon the foregoing, the Complaint filed by TOM B. BERG, on May 18, 2009, is hereby DENIED.

DATED: Honolulu, Hawaii, **AUG 10 2010**_____.

NEIGHBORHOOD COMMISSION

By 
Brendan Bailey
Its Chair

09-07636/139849